

PUBLIC LAW BOARD NO. 3241

In the Matter of:	)	
	)	
BROTHERHOOD OF MAINTENANCE	)	National Mediation Board
OF WAY EMPLOYES,	)	Administrator
	)	
Organization,	)	
	)	
and	)	
	)	Case No. 26
UNION PACIFIC RAILROAD	)	Award No. 26
COMPANY,	)	
	)	
Carrier.	)	

Hearing Date: January 12, 1988
Hearing Location: Sacramento, California
Date of Award: September 28, 1988

MEMBERS OF THE BOARD

Employes' Member: C. F. Foose
Carrier's Member: J. J. Shannon
Neutral Member: John B. LaRocco

STATEMENT OF THE CLAIM

- "1. The Carrier violated the provisions of the current Agreement when, by way of letter dated July 11, 1986, it dismissed Track Gang Foreman Mr. S. G. Bottorff, said action being abusive and unduly harsh.
- "2. The Carrier will now be required to reinstate Claimant Bottorff to his position with seniority and all other rights restored unimpaired and with compensation for all wage loss suffered during the intervening period."

OPINION OF THE BOARD

This Board, after hearing upon the whole record and all evidence, finds that the parties herein are Carrier and Employee within the meaning of the Railway Labor Act as amended; that this Board has jurisdiction over the parties and the subject matter of the dispute herein; that this Board is duly constituted by an Agreement dated July 23, 1982; and that all parties were given due notice of the hearing held on this matter.

I. BACKGROUND AND SUMMARY OF THE FACTS

During April, 1986, the Carrier's Special Agents conducted an empirical surveillance of the Little Valley Section Gang as part of an ongoing investigation into the theft of company tools, equipment, and materials (including gasoline and oil). Carrier officers were not aware of the investigation until a Special Agent sent his report to the Division Superintendent and the Division Engineer on or about June 20, 1986. The report contained a rendition of the Special Agent's observations of the Section Gang's activities on Friday, April 11, 1986. In summary, the Special Agent reported that the Gang Foreman consumed only fifty minutes to conduct a Federal Railroad Administration (FRA) track inspection over fifteen miles of track in his territory. The Special Agent also saw that the Foreman and gang members were not wearing their hardhats while performing their duties. In addition, the Special Agent watched the gang Foreman leave work ten minutes before the end of his assignment.

As a result of the Special Agent's report, the Carrier notified the Track Gang Foreman (Claimant herein) on June 25, 1986 that he allegedly failed to conduct a proper FRA track inspection

on April 11, 1986. The Carrier also charged Claimant with leaving his job before the assigned quitting time and with failing to wear mandatory safety gear.

At an investigation held on June 30, 1986, the Special Agent confirmed the accuracy of his April 11, 1986 inspection report. He also related that he deliberately withheld his observations from Carrier officers because the theft investigation was unfinished.

The Roadmaster testified that in order to properly inspect the track and switches on the fifteen miles of territory under Claimant's jurisdiction, he would expect Claimant to take two hours and twenty minutes to complete the task. Claimant concurred that he would spend approximately two hours to conduct a FRA inspection on the fifteen miles of track. However, Claimant explained that on April 11, 1986, he only inspected the upper end of the fifteen mile section of track. He declared that he and his gang had already inspected the remaining portion of the track the day before. However, Claimant's track inspection report indicated that the entire fifteen mile section of track was inspected on April 11, 1986. Lastly, Claimant admitted that he left work early and did not refute the Special Agent's observation that he performed service without wearing his hardhat.

Following the investigation, the Carrier dismissed Claimant from service.

II. DISCUSSION

The Organization urges this Board to summarily overturn the assessed discipline because the Carrier did not convene an investigation within the ten day time limitation specified in Rule 20.

The third sentence of the first paragraph of Rule 20 provides: "Ordinarily, such investigation will be held within ten days after the alleged offense has been committed...". The word "ordinarily" is critical. The term impliedly envisions that the Carrier can hold an investigation beyond the ten day limit although it is normally required to meet the deadline. When the Carrier does not know (or have any reason to suspect) that an employee could have committed an infraction, the situation is "extraordinary" as opposed to "ordinary". Thus, the Carrier need not comply with the time limits until it knows or should have known that "... an alleged offense has been committed..." In this case, Carrier officials did not discover that Claimant may have conducted an improper track inspection until they received the Special Agent's report sometime after June 20, 1986. The Carrier could not prefer charges against Claimant until it was aware that he might have committed misconduct. Once the Carrier acquired knowledge that Claimant may have committed an offense, it promptly convened an investigation in compliance with Rule 20.

The Carrier presented substantial evidence that Claimant conducted an inadequate and hasty track inspection. If Claimant

had performed some of the inspection on April 10, 1986, he should have recorded the correct date on the track inspection report. Since Claimant's inspection report indicated that he had inspected the track on April 11, 1986, the Hearing Officer could give little credence to Claimant's unsubstantiated assertion that he had conducted an inspection on the previous day.

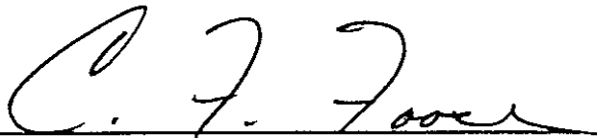
Failing to conduct a thorough inspection is a serious safety violation. Railroad workers and the general public trust Claimant to carefully monitor track conditions with the goal of avoiding tragic accidents. Thus, some discipline was warranted but discharge was an excessive and unduly harsh penalty in view of Claimant's seven years of good service. Therefore, the Carrier shall reinstate Claimant to service with his seniority unimpaired but without pay for time lost.

This Board has read Claimant's December 17, 1986 correspondence to his Union representative. The letter amply manifests Claimant's vindictive and antagonistic attitude toward the Carrier and some of its supervisors. We advise Claimant to suppress his bitter feelings and return to work with the objective of serving the Carrier to the best of his abilities. Claimant runs the risk of committing additional misconduct if he resumes service with a poor work attitude.

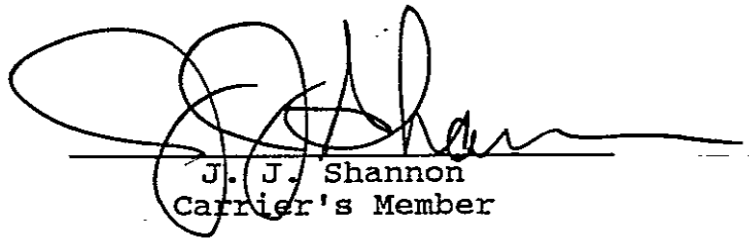
AWARD AND ORDER

Claim sustained but only to the extent consistent with our opinion. The Carrier shall reinstate Claimant to service, with his seniority unimpaired, but without pay for time lost. The Carrier shall comply with this award within thirty days of the date stated below.

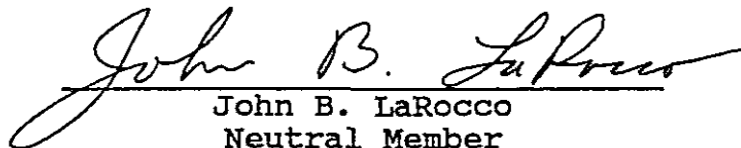
Dated: September 28, 1988



C. F. Foose
Employees' Member



J. J. Shannon
Carrier's Member



John B. LaRocco
Neutral Member